
(2016) 11 BOM CK 0024

BOMBAY HIGH COURT

Case No: Writ Petition (L.) No. 3004 of 2016.

Seven Star Satellite
Private Limited -
Petitioner @HASH
Union of India through
Ministry of Information
and Broadcasting

APPELLANT

Vs

RESPONDENT

Date of Decision: Nov. 30, 2016

Acts Referred:

- Cable Television Networks (Regulation) Act, 1995 - Section 20

Hon'ble Judges: A.S. Oka and Anuja Prabhudessai, JJ.

Bench: Division Bench

Advocate: Mayur Khandeparkar a/w Gauraj Shah and Sunil Zalmi and Ms. Ashwini Kale i/by (MZD Legal Consultancy), Advocates, for the Petitioner.; Rajiv Chavan, Senior counsel a/w Dharmesh Joshi, Advocates, for the Respondent

Final Decision: Disposed Off

Judgement

1. On the earlier date, the draft amendment was tendered by the learned counsel appearing for the Petitioner which is taken on record and marked "X1" for identification. As the Petition is at preadmission stage, we permit amendment which will be carried out within a period of one week from the date on which this order is uploaded.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner has challenged the impugned order dated 2nd November, 2016 (Exhibit I to the Petition) of which the following is operative part :-

"AND Whereas, the Competent Authority has decided to impose a penalty of prohibition of transmission/retransmission of Care World TV channel on any platform throughout the territory of India for a period of one week (7 days).

NOW, THEREFORE, the Central Government, in exercise of the powers conferred by subsection (2) & (3) of Section 20 of the Cable Television Networks (Regulation) Act, 1995 and under paras 8.2.1, 8.2.2 & 8.2.3 of the guidelines for uplinking from India orders to prohibit the transmission or retransmission of "Care World" TV channel for one week (7 days) on any platform throughout India with effect from 00.01 hrs. on 09112016 till 00.01 hrs. 16112016.

This issues with the approval of the Competent Authority."

3. Thus, a drastic order has been passed prohibiting transmission or retransmission of Care World T.V. Channel for a period of one week.

4. The challenge to this order is on various grounds. The first ground is that though in the impugned order the submissions made on behalf of the Petitioner have been reproduced, the said submissions have not been dealt with. The second submission is that hearing is given on the basis of the show cause notice to the Petitioner by the Inter Ministerial Committee (IMC) but the impugned order is signed by the Director (BC) of the Ministry of Information and Broadcasting. It was pointed out that the order records that the Competent Authority has decided to impose the penalty. The show cause notice dated 26th June, 2015 was issued by the said Director. It is urged that only the Ministry of Information and Broadcasting had power to pass the impugned order.

5. The learned Senior Counsel representing the Respondent relied upon affidavit in reply of Shri M. Rajendran, Under Secretary in the Ministry of Information and Broadcasting. He pointed out that the program telecast by channel Care World violated various provisions of Cable Television Networks Rules, 1994 as the program offended the test of decency. He submitted that even the Court can have look at the objectionable material. He urged that the impugned order shows that the contentions raised by the Petitioner have been dealt with. He also invited attention to that part of the affidavit which sets out the contents of the objectionable program.

6. Apart from larger issue of the power of the Government of India of prohibiting telecast of T.V. Channel, according to us, prima facie, the impugned order is completely illegal. Therefore, we issue Rule. Advocate on record for the Respondent waives service.

7. We have heard the learned counsel appearing for the parties on the prayer for interim relief. We have carefully perused the impugned order. The show cause notice was issued by the Director (BC) of Ministry of Information and Broadcasting of the Government of India. The impugned order records that personal hearing was given by IMC. The impugned order records contentions raised in the reply filed by the Petitioner to the show cause notice. We find that most of the contentions raised in the reply have not be dealt with. Moreover, the impugned order records that the Competent Authority has decided to impose the impugned penalty. The order of the Competent Authority has not been supplied to the Petitioner.

8. Thus, the show cause notice is given by one authority, hearing is given to the Petitioner by another authority (IMC) and the order is passed under the signature of Director (BC) of the Information and Broadcasting Ministry. Thus, it appears to us that this is a case of breach of elementary principles of natural justice.

9. Apart from this aspect, wider issue of power of the Government of India to pass such a drastic order will have to be gone into.

10. Hence, a case is made out for grant of interim relief. Therefore, we pass the following interim order :

ORDER

By way of interim relief, we direct that till the disposal of the Writ Petition, no steps shall be taken to implement the order dated 2nd November, 2016 (Exhibit-I to the Petition). The learned counsel appearing for the Petitioner on instructions states that the Petitioner will not telecast the concerned episode subject of the impugned order. We accept the said statement.